

ORIGINAL



CRS

center for
resource
solutions



0000145230

RECEIVED

2013 MAY 31 A 10:18

Docket Nos. E-01345A-10-0394 et al.

E-01345A-12-0290

E-01933A-12-0296

E-04204A-12-0297

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

MAY 31 2013

DOCKETED BY

May 31, 2013

Commissioners
Arizona Corporation Commission
Commissioners Wing
1200 W. Washington - 2nd Floor
Phoenix, Arizona 85007

Dear Commissioners,

The Center for Resource Solutions (CRS) appreciates the opportunity to provide input to the Arizona Corporation Commission (the Commission) on the options proposed for utility Renewable Energy Standard and Tariff (REST) compliance and urges the Commission to reject Staff's proposal of Track and Monitor.

- I. Green-e Energy certification, the Arizona REST, and other governmental and nongovernmental entities prohibit double counting RECs or renewable energy attributes

CRS is a nonprofit organization that creates policy and market solutions to advance sustainable energy and mitigate climate change. CRS administers Green-e® Energy, the nation's only independent certification and verification consumer protection program for renewable energy sold in the voluntary market. Green-e Energy certifies and verifies over two-thirds¹ of the U.S. voluntary retail renewable energy market and more than ninety percent of U.S. voluntary retail renewable energy certificate (REC)² sales³. CRS's role in this market is to protect the renewable energy purchasers against double counting and false claims, and ensure the purchaser of renewable energy that they are receiving all of the attributes of renewable energy generation that they purchased.

¹ National Renewable Energy Laboratory, *Market Brief: Status of the Voluntary Renewable Energy Certificate Market (2011 Data)* available at <http://www.nrel.gov/docs/fy12osti/56128.pdf> at 5.

² U.S. Department of Energy, U.S. Environmental Protection Agency, World Resources Institute, and Center for Resource Solutions, *Guide to Purchasing Green Power: Renewable Electricity, Renewable Energy Certificates, and On-Site Renewable Generation* (March 2010). Available at: http://www.epa.gov/greenpower/documents/purchasing_guide_for_web.pdf. ("Renewable Energy Certificates (RECs)"... "are the property rights to the environmental benefits from generating electricity from renewable energy sources.").

³ National Renewable Energy Laboratory, *Status and Trends in U.S. Compliance and Voluntary Renewable Energy Certificate Markets (2010 Data)* available at apps3.eere.energy.gov/greenpower/pdfs/52925.pdf at 30-31.



CRS

center for
resource
solutions

As mentioned in the previous letter to the Commission, dated November 16, 2012, the Arizona voluntary REC market is thriving, in large part because the owners of distributed generation (DG) facilities are able to claim the RECs produced from their renewable energy generation, and, if they so choose, sell them in either the voluntary or the compliance market. In 2011, Arizona had approximately 2,986 residential customers and 146 non-residential customers purchase renewable energy in the voluntary market, and Arizona renewable generators generated nearly 29,997 MWh that were sold into the voluntary REC market.⁴

The *Green-e Energy National Standard* (National Standard) is governed by the independent Green-e Governance Board which solicits public comments through open stakeholder processes when changes or updates are considered for the National Standard.

The National Standard and other Green-e Energy governing documents set criteria for what constitutes double counting for the REC sales that Green-e Energy certifies, and thereby set the standards for the vast majority of the voluntary market. There are several sections of Green-e Energy governing documents that describe double counting and REC eligibility. The National Standard requires Green-e Energy certified renewable electricity and RECs to be additional to any renewable energy or RECs required by state or federal RPS requirements, legislation, or settlement agreements.⁵ It states "RECs may NOT be used in a Green-e Energy certified product under the following circumstances: 1) The REC or the electricity from which the RECs are derived is being used simultaneously to meet a local, state, or federal energy mandate or other legal requirement;" and, in Section E. Double Counting and Use of Utility Resources, "Eligible RECs or renewable energy can be used once and only once; making a claim (e.g. stating 'we buy wind power') is one example of a 'use' that results in retirement. Renewable energy or RECs (or the renewable or environmental attributes incorporated in that REC) that can be legitimately claimed by another party may NOT be used in Green-e Energy certified REC products".⁶

⁴ Center for Resource Solutions, data aggregated from Green-e Energy verification of 2011 certified sales.

⁵ Center for Resource Solutions, *Green-e Energy National Standard* http://www.green-e.org/getcert_re_stan.shtml at 7-8.

⁶ Id., ("1) When the same REC is sold by one party to more than one party, or any case where another party has a conflicting contract for the RECs or the renewable electricity; 2) When the same REC is claimed by more than one party, including any expressed or implied environmental claims made pursuant to electricity coming from a renewable energy resource, environmental labeling or disclosure requirements. This includes representing the energy from which RECs are derived as renewable in calculating another entity's product or portfolio resource mix for the purposes of marketing or disclosure; 3) When the same REC is used by an electricity provider or utility to meet an environmental mandate, such as an RPS, and is also used to satisfy customer sales under Green-e Energy; or 4) Use of one or more attributes of the renewable energy or REC by another party (See Section III.C. "Fully Aggregated Renewables" for details). This includes when a REC is simultaneously sold to represent "renewable electricity" to one party, and one or more Attributes associated with the same MWh of generation (such as CO2 reduction) are also sold, to another party.").



CRS

center for
resource
solutions

The Green-e Energy Code of Conduct and Customer Disclosure Requirements (Code of Conduct) describes double counting as “When the disaggregated attributes associated with a single MWh of generation are ultimately sold to or claimed by more than one consumer.” The Code of Conduct specifically identifies that double counting would occur where the same REC is used by an electricity provider or utility to meet an environmental mandate, such as an RPS, and is also used to satisfy customer sales under Green-e Energy.⁷ Green-e Energy Tracking System Attestations, which are signed by all renewable energy generators participating in Green-e Energy and electronic tracking systems such as the Western Renewable Energy Generation Information System (WREGIS), also require signatories to declare that the renewable attributes contained in the RECs have not been used to meet “any federal, state, or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by any entity other than the party whose behalf the Renewable Attributes are retired.”⁸ Hence, Green-e Energy would not be able to verify the DG RECs in Arizona under Staff’s Track and Monitor proposal.

The U.S. Environmental Protection Agency has adopted rules for the Green Power Partnership program that are nearly identical to the rules for Green-e Energy, including definitions regarding double counting.⁹ Other standards and certifiers including the U.S. Green Building Council’s LEED¹⁰ program require that RECs and green power purchases be certified by Green-e Energy or an equivalent program in order to obtain credit for green power use.

Similar language against double counting appears in the REST, stating that “If an Affected Utility trades or sells environmental pollution reduction credits or any other environmental attributes associated with kWh produced by an Eligible Renewable Energy Resource, the Affected Utility may not apply Renewable Energy Credits derived from that same kWh to satisfy the requirements of these rules.”¹¹

II. Staff’s proposal would result in the taking of private property and giving it to the utilities

Staff’s proposal, called Track and Monitor, does more than track and monitor the kWh produced by eligible resources. It uses these kWh to reduce the REST requirements. This use of kWh data effectively results in a claim on the renewable energy value that would otherwise be included in the REC, taking value from the contractual REC owner and nullifying the REC owner’s ability to

⁷ Center for Resource Solutions, *Green-e Energy Code of Conduct and Customer Disclosure Requirements* http://www.green-e.org/getcert_restan.shtml at 3-4 (accessed, May 30 2013).

⁸ Center for Resource Solutions, *Tracking System attestation*, <http://www.green-e.org/verifdocs.html> at 3.

⁹ U.S. Environmental Protection Agency, *EPA’s Green Power Partnership Requirements* <http://www.epa.gov/greenpower/pubs/> at 3 and 8 (accessed, May 30 2013).

¹⁰ U.S. Green Building Council, *LEED Green power v. 2.9* <http://www.usgbc.org/node/1731298?return=/credits/new-construction/v2009> (accessed, May 30 2013).

¹¹ Ariz. Admin. Code, 14-2-1804(A), (E), 1812(B)(5).



CRS

center for
resource
solutions

make their own claim or sell the REC. The utility would be counting renewable energy that it does not own and from which RECs were not obtained for compliance with its REST obligations. This would result in a claim on the REC such that Green-e Energy would not be able to certify or verify the sale of the RECs that are legitimately owned by the generators.

While the Track and Monitor proposal may have been drafted to circumvent problems with double counting, the proposal fails to ameliorate this problem for two reasons:

- 1) Any proposal intended to give utilities credit for RECs they do not own constitutes a claim on the REC. Such credit may be in the form of a waiver of compliance obligation and does not need to be a formal counting of the REC itself. If the underlying kWh is being used to reach or modify a compliance obligation, then the value of the REC is being taken by the utility, and according to Green-e Energy rules, any other use of the REC would constitute double counting.
- 2) Track and Monitor circumvents the legal requirement in the REST law that utilities obtain and retire RECs to demonstrate compliance.¹² Implementation of Track and Monitor would mean that any other use of the REC (other than for compliance) would constitute double counting.

Green-e Energy would not be able to certify or verify DG RECs from Arizona covered by Track and Monitor. Enabling utilities to use kWh from customer DG facilities to modify their REST obligations would effectively count the kWh as a REC and take the REC from its rightful owner.

Green-e Energy is not alone in its interpretations of double counting. WREGIS is an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council. WREGIS tracks renewable energy generation from units that register in the system by using verified meter data and creating RECs for this generation.¹³ Many Western states, including California, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, and Washington allow or require RECs be tracked in WREGIS in order for the RECs to count for the state's Renewable Portfolio Standard.

WREGIS requires that RECs be fully aggregated, and that none of the attributes of renewable energy generation¹⁴ are sold separately or claimed or transacted outside of the WREGIS

¹² Ariz. Admin. Code, 14-2-1804(A), (E), 1812(B)(5).

¹³ Western Renewable Energy Generation Information System <http://www.wecc.biz/WREGIS/Pages/default.aspx>

¹⁴ American Bar Association, et al., *Master Renewable Energy Certificate Purchase and Sale Agreement* (Version 1.0), at iv (2007). <http://apps.americanbar.org/enviro/committees/renewableenergy/RECMasterContract.pdf>.

("Environmental Attribute" means an aspect, claim, characteristic, or benefit associated with the generation of a quantity of electricity by a Renewable Energy Facility, other than the electric energy produced, and that is capable of



certificates.¹⁵ Under the Track and Monitor approach, kWh from the renewable DG facility are effectively credited to the utility company for REST compliance. Use of the renewable kWh to meet or determine a compliance obligation renders the DG customer's REC effectively taken and used by the utility. Unless the utility purchased or otherwise contractually received the REC, the utility would be claiming the REC that rightfully belongs to the DG owner, resulting in the DG owner being unable to claim ownership of the REC and its associated environmental values or sell their REC into the voluntary market (or potentially, other states' RPS markets). If any Arizona DG owners are tracking their RECs in WREGIS, selling their RECs would be in violation of the WREGIS Terms of Use, which require all RECs tracked in the system to be fully bundled and not have attributes counted or claimed elsewhere.

The Federal Trade Commission (FTC) also identifies double counting of RECs as a problem. The FTC interprets the double use of a REC or any of its attributes to be misleading. Stating specifically "If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy."¹⁶ Hence, not only is it deceptive to represent that one is using renewable energy when the REC has already been sold, but the implied use of RECs that are not owned is also deceptive. Thus, if the Commission allows utilities to use reported kWh of DG to reduce their REC obligations under the REST, the utility is effectively retiring the REC so that no one else can use it. In order to be consistent with the FTC, Green-e Energy will not certify RECs that have been effectively claimed when they were used to reduce a utility's REST obligations.¹⁷

being measured, verified, or calculated. An Environmental Attribute may include one or more of the following identified with a particular megawatt hour of generation by a Renewable Energy Facility designated prior to Delivery: the Renewable Energy Facility's use of a particular Renewable Energy Source, avoided NOx, SOx, CO₂ or greenhouse gas emissions, avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of Applicable Law in order to site and develop the Renewable Energy Facility itself) or as otherwise defined under an Applicable Program, or as agreed by the Parties. Environmental Attributes do not include production tax credits or other direct third-party subsidies for generation of electricity by any specified Renewable Energy Facility."

¹⁵ Western Electricity Coordinating Council, *WREGIS Operating Rules* (December 2010).

<http://www.wecc.biz/WREGIS/Documents/WREGIS%20Operating%20Rules%20v%205%2031%202012.pdf>. ("A WREGIS Certificate represents all Renewable and Environmental Attributes from one MWh of electricity generation from a renewable energy Generating Unit registered with WREGIS or a Certificate imported from a Compatible Registry and Tracking System and converted to a WREGIS Certificate.")

¹⁶ Federal Trade Commission, Green Guides 260.15 (d), 32-34, <http://www.ftc.gov/opa/2012/10/greenguides.shtm> (October 1, 2012).

¹⁷ Federal Trade Commission, *Proposed Revisions to the Green Guides*, at 152 (October 2010). Available at:

<http://ftc.gov/os/fedreg/2010/october/101006greenguidesfrn.pdf>. ("Once renewable electricity is introduced into the grid, it is physically indistinguishable from electricity generated from conventional sources. Consumers, therefore, cannot determine for themselves the source of the electricity flowing into their homes. Because electricity transactions can be tracked, however, retail customers can "buy" renewable power by either: (1) purchasing renewable energy certificates (RECs); or (2) purchasing renewable power through contracts with their utility."... "Under the REC method, a renewable electricity generator splits its output into two components: (1) the electricity itself; and (2) certificates representing the renewable attributes of that electricity. Specifically, generators that produce renewable electricity sell their electricity at market prices for conventionally produced power and then sell the renewable attributes of that electricity through separate certificates. Organizations purchase RECs to characterize



CRS

center for
resource
solutions

III. The kWh disclosures required by the REST are informational only and have no bearing on the utilities purchasing requirements or compliance with the REST.

The REST currently requires Arizona utilities to procure RECs for compliance obligations, not kWh.¹⁸ In Title 14, Chapter 2, Section 1804 (A) reads ... “each Affected Utility shall be required to satisfy an annual Renewable Energy Requirement by obtaining Renewable Energy Credits from Eligible Renewable Energy Resources.” Section (D) goes on to say that “Once a Renewable Energy Credit is used by any Affected Utility to satisfy these requirements, the credit is retired and can not be subsequently used to satisfy these rules or any other regulatory requirement.” Green-e Energy would consider any REC used for compliance to be retired. Likewise any kWh derived from renewable energy used for compliance retires the associated REC.

CRS urges the Commission to prevent utilities from circumventing the requirements in the REST and to allow the REST to stand as it was intended and as it is written. Specifically, the reporting requirements should not be interpreted to minimize the compliance obligations only achievable through RECs. Utilities should not be allowed to take, without agreement and appropriate compensation, the private property and the credit for the voluntary efforts that companies and citizens take on their own behalf and at their own expense.

It is important that the Commission upholds the contract rights and the property rights of Arizona citizens and businesses. It is also important that the Commission uphold the REST as it was written. CRS recommends that if the utilities are out of compliance with the REST, this information should be publically available. The Commission can use its discretion within the limits of the law regarding what sanctions to apply to utilities that are not in compliance with their REST obligations, however it should not appear that the utility is meeting its REST obligations unless it has procured all of the required RECs.

CRS urges the Commission to reject the Track and Monitor proposal because of the impact on Arizona renewable energy generators and customers, and because it violates the requirements of the REST. Utilities should not be allowed to claim private property that belongs to citizens, without the owner voluntarily transferring ownership to the utility. The proposed Track and Monitor raises issues with double counting, as well as potential takings clause issues associated with utilities claiming or invalidating RECs belonging to citizens and businesses.

Thank you for accepting and considering our input. Please do not hesitate to contact us should you have questions regarding the impact of this proposal on the voluntary renewable energy

all or a portion of their electricity usage as “renewable” by matching the certificates with the conventionally produced electricity they normally purchase.”).

¹⁸ Ariz. Admin. Code, 14-2-1804(A), (E), 1812(B)(5).



CRS

center for
resource
solutions

market in Arizona or the Green-e Energy program. We are available to call in to the hearing on June 3, and the CRS Executive Director, Jennifer Martin, will be available from 1 pm to 5 pm.

Sincerely,

Robin Quarrier
Counsel
Center for Resource Solutions
415-568-4285
robin@resource-solutions.org

Jennifer Martin
Executive Director
Center for Resource Solutions
415-561-2100
jmartin@resource-solutions.org